

## **How to improve parliamentary control over the work of anti-corruption authorities?**

There are legal provisions on parliamentary control in general, but also legal provisions on the exercise of control over the activity of anti-corruption authorities, but these need to be developed. The institution of parliamentary scrutiny needs to be conceptualized, clarifying the forms and methods. The rules must be balanced - parliamentary scrutiny must not undermine the independence of anti-corruption authorities, a principle that must govern anti-corruption activity. With regard to parliamentary scrutiny of the work of anti-corruption authorities, parliamentary practices often appear to be arbitrary and biased. The legal provisions on parliamentary scrutiny, once established, must be applied in full and impartially. In the following, after an analysis of how to exercise parliamentary control over the anti-corruption authorities, recommendations for improving the process are set.

### **The implementation of the provisions on parliamentary scrutiny of the work of anti-corruption authorities**

#### *Subcommittee on parliamentary scrutiny of SIS activity*

By virtue of art. Article 28 of Parliament's Rules of Procedure must set up a subcommittee in the Committee on National Security, Defense and Public Order to exercise parliamentary control over the work of the SIS. A representative of the parliamentary opposition should have been elected as chairman of this subcommittee.

The subcommittee must:

- monitor the SIS's compliance with the law, human rights and fundamental freedoms and the democratic order of the State;
- ensure that the political commitment of the SIS is not admitted;
- verify the observance by the SIS of the provisions of the Constitution and of the laws governing the activity of the SIS;
- examine cases of violation of the Constitution, laws, rights and constitutional freedoms of citizens.

The members of the subcommittee may have access to confidential information by signing, in each individual case, a commitment to maintain the confidentiality of information which is a state secret, and shall be liable in accordance with the law. In this context, the members of the Subcommittee may, with the agreement of its Chairperson, request secret information and information on the day-to-day operation of the SIS, except for information on special investigative activity or the identity of undercover requires non-disclosure of identity.

In practice, Parliament's website provides neither information on the subcommittee (its nominal composition) nor information on its work.

#### *Hearing annual activity reports*

Despite the regulations, the provisions on parliamentary control over the activity of anti-corruption authorities are practically not implemented.

Thus, the annual activity reports of NIA and SIS were never heard in the plenary of the Parliament.

In fact, SIS reports are not published, neither on the official website of the Parliament, nor on the official website of the SIS.

There have been cases when NIA reports have been heard by the Committee on Legal Affairs, Appointments and Immunities, even if, according to Parliament Decision no. 72/2019 on the areas of activity of the standing committees of the Parliament, the field of anti-corruption is the responsibility of the Committee on National Security, Defense and Public Order. In fact, unlike the Parliamentary Control Plan of the Committee on National Security, Defense and Public Order for 2022, that of the Committee on Legal Affairs, Appointments and Immunities remains unavailable.

In addition to the fact that the reports were heard by a parliamentary committee and not by the full Parliament, it is noteworthy that this exercise was often delayed and superficial.

Regarding the NAC, the only case of effective exercise of parliamentary control was the case in 2021. However, the way this process was organized and conducted generated the perception that the purpose pursued by members of Parliament was rather the revocation of the NAC director, than the exercise of genuine control.

The control was initiated by the Parliament Decision no. 108/2021, shortly after the Law on the National Anticorruption Center was supplemented with provisions that allow the dismissal of the director following parliamentary scrutiny. In this case, following the control, the Evaluation Report of the NAC activity was prepared for the period January 2016 - September 2021. Taking note of the Evaluation Report, by the Parliament Decision no. 186/2021, the activity of the NAC was found to be inefficient and unsatisfactory, the report being sent to the Ministry of Justice, the General Prosecutor's Office and the SIS in order to take the necessary measures. At the same time, by the Parliament Decision no. 187/2021, the director of NAC was dismissed from office, even if he had been appointed on July 31, 2019, by Parliament Decision no. 104/2019, and cannot be held responsible, effectively, for the activity of the NAC between January 2016 and July 2019. Moreover, all the reproaches that can be submitted to the way the parliamentary control was exercised are contained in the Note of Disagreement of the NAC. According to the NAC, the Evaluation Report contains multiple errors, interpretations and distortions of facts, which influenced the formulation of erroneous conclusions.

It is problematic that the evaluation of the NAC activity was performed in the absence of SMART indicators (Specific, Measurable, Accessible, Relevant and Time-bound), which made the exercise look subjective and arbitrary.

The evaluation report focused on issues related to the National Anticorruption Line; Examination of criminal proceedings; Prosecution; Special subjects followed; Corruption schemes investigated; Special investigation activity; Activity on contravention cases; ARBI activity; Simulated behavior detector testing (polygraph); Assessing the institutional integrity of public entities.

The indicators, some of which are confused and do not cover the area of competence of the NAC. According to art. 4 para. (1) of the Law on the National Anticorruption Center, the duties of the NAC include:

- the prevention, detection, investigation and prosecution of corruption and corruption-related offenses and offenses, as well as acts of corrupt behavior;
- carrying out the anti-corruption expertise of the draft legislative acts and of the draft normative acts of the Government, as well as of other legislative initiatives presented in the Parliament;
- conducting institutional integrity assessment and monitoring the implementation of integrity plans and assessing progress;
- conducting operational and strategic analysis of acts of corruption, acts related to corruption and acts of corrupt behavior;
- recovery of criminal assets.

### *Hearing of anti-corruption authorities on various topics*

The current parliamentary term did not hold hearings of the anti-corruption authorities. In fact, the only authority heard was NAC, all taking place in 2018 - pre-election year.

On July 11, 2018, the National Security, Defense and Public Order Commission heard the NAC and the Ministry of Health, Labor and Social Protection on the phenomenon of corruption in the field of health care. As a result, it was recommended that the authorities heard:

- strengthen the functional capacities for preventing and combating corruption in the field of health care;
- identification of gaps in the normative acts that prevent the good development of the activity that determines the existence of corruption factors;
- take the necessary actions to solve the problems they face in their activity;
- establish clear and effective enforcement of general anti-corruption rules;
- implement transparent public procurement mechanisms;
- identify the problems that generate acts of corruption in the procedure of registration of medicines in the State Nomenclature of Medicines of the Republic of Moldova and taking concrete actions to eliminate the factors that favor acts of corruption;
- examine the problems that persist in the accreditation process of medical institutions and removing the aspects that are against the law.

On October 10, 2018, the National Security, Defense and Public Order Commission organized hearings of the NAC, the National Patrol Inspectorate of the General Inspectorate of Police and Public Property Agency on the implementation of the NAC's mandate to prevent corruption by applying the institutional integrity assessment tool of the Inspectorate. National Patrol and state and municipal enterprises during 2017 - 9 months 2018. As a result, it was recommended:

- To the General Police Inspectorate – to strengthen the climate of institutional integrity through the effective application of national and sectoral anti-corruption policies within all subordinate units, as well as the specific requirements of professional integrity for employees;
- To the National Patrol Inspectorate – to remove the arrears established for the implementation of the Integrity Plan; to revise, together with the relevant subdivisions of the Ministry of Interior, the departmental normative framework to exclude the conflicts of norms of law and the vicious provisions found; to ensure an effective internal managerial control system in order to exclude the manifestations of corruption, pressures and abuses of the patrol agents in the supervision and control of road traffic, as well as the exclusion of procedural violations admitted by employees, with subsequent sanctioning of those guilty; to hire and promote public officials based on merit and professional integrity, avoiding favoritism; to reduce corruption risks deriving from duplication of duties of the National Patrol Inspectorate and the National Agency for Car Transport, to include by examining the opportunity to approve at inter-institutional level an act or agreement that would establish clarity both in terms of purpose, functions, powers and the limits of their exercise, as well as in terms of finding and sanctioning, if the control is carried out in the context of the so-called "mixed mobile teams"; to elaborate a mechanism for bringing foreign citizens to criminal liability, by signing an inter-institutional agreement if necessary; to organize and permanently develop internal and external trainings, both on topics related to the specific activity of employees and on anti-corruption issues;
- To the Public Property Agency – to take the necessary measures, together with the relevant authorities, in order to remove the corrupt factors from the normative acts that regulate the activity of state-owned enterprises and publicly traded companies; to ensure that anti-corruption procedures are implemented by businesses; to provide methodological support and ensure the efficient implementation of the internal control system, including risk management in enterprises; to take the necessary measures to ensure the integrity and efficient use of the assets deposited in the share capital of the enterprises founded and / or transferred with the right of administration; to

ensure the transparency of the activities carried out by the enterprises in accordance with the legal provisions; to ensure the implementation by the founded enterprises of the normative provisions regarding the procurement of goods, works and services; to implement the measures of the Sectoral Anti-Corruption Plan in the field of administration and denationalization of public property for the years 2018-2020, approved by Government Decision no. 554/2018; to adjust the normative framework that regulates the activity of state enterprises and municipal enterprises, including by excluding the norms that can generate acts of corruption.

On November 7, 2018, the National Security, Defense and Public Order Commission held hearings of the NAC and the Ministry of Education, Culture and Research on the phenomenon of corruption in the education system. As a result, it was recommended:

- To the NAC and the Ministry of Education, Culture and Research – to verify the legality of the establishment of parental associations and the efficient and transparent management of the financial means of the financial resources accumulated exclusively as a result of voluntary donations; to implement actions to prevent and combat the collecting of informal payments in educational institutions; to implement mechanisms to prevent corruption in the sessions of semester theses and exams in general education (anti-plagiarism platforms / software in universities); to implement mechanisms to prevent corruption in school Olympics; to involve young people in corruption prevention activities; to sign a collaboration agreement between the NAC and the Ministry of Education, Culture and Research, in order to prevent and combat corruption, strengthen the integrity of teachers and promote standards of integrity in society; to conduct anti-corruption activities.
- To the Ministry of Education, Culture and Research – to improve the practices of enrolling children in early education institutions, through information systems; to ensure transparency of the financial reports of educational institutions; to ensure transparent records of donated goods; to adopt codes of ethics and professional ethics; to introduce a course in educational institutions of all levels on the risks of corruption in education; to adopt and implement a sectoral anti-corruption plan in the field of education.

On November 21, 2018, the National Security, Defense and Public Order Commission held hearings of the NAC on the phenomenon of corruption in the local public administration. As a result, it was recommended:

- to the NAC – to ensure the continuity of the application of the necessary tools in order to prevent and fight corruption in the local public administration;
- to the Government – to re-evaluate the legal framework for regulating the activity of the local public administration in the light of the factors and risks of corruption identified by the NAC and to submit proposals to amend the corresponding regulations; to strengthen the capacity of the State Chancellery to participate in the process of preventing and combating corruption in the local public administration; to ensure the proper participation of the territorial offices of the State Chancellery in the process of preventing and combating corruption in the local public administration.

*Unfortunately, the Committee on National Security, Defense and Public Order does not return to the issues heard, it is not clear whether the level of implementation of the recommendations submitted to the anti-corruption authorities is being monitored.*

### *Parliamentary control over the enforcement of anti-corruption legislation*

With regard to anti-corruption legislation, the enforcement of two laws has been subject to scrutiny.

On January 23, 2018, the National Security, Defense and Public Order Commission heard the authorities responsible for the execution of Law no. 269/2008 on the application of testing to the simulated behavior detector (polygraph).

As a result, it was found:

- the provisions of the law are incomplete, ambiguous or contradictory;
- although the law was adopted in 2008, de facto, it began to be implemented with the approval of the Regulation on the organization and functioning of the State Commission for tests with the use of polygraph by Government Decision no. 475/2014;
- a problem is the lack of polygraphists, certified and registered polygraph assistants, polygraph apparatus, specialized testing offices and other technical means necessary for testing;
- in view of the austere budget, the authorities have difficulty in identifying the financial sources for procuring simulated behavior detectors (polygraphs) and for ensuring the initial and regular training of polygraphists, the costs of these technical means and services being considerable;
- the polygraph device is not included in the Official List of measuring instruments and measurements subject to legal metrological control, approved by Government Decision no. 1042/2016, which could generate litigation in court;
- a problem is also the lack of standardized tests for polygraph test subjects.

It was also recommended to the Government - to initiate a competent working group for the elaboration of normative acts amending the ambiguous and unclear legal provisions in force regarding the probative force of polygraph tests, examination and identification of legal solutions regarding the standardized certification; to identify financial sources from the state budget for the purchase of polygraph devices for the authorities that do not currently own them, as well as for ensuring the process of initial and continuous training of polygraphologists; to examine the appropriateness of setting up a single, independent testing center for the simulated behavior detector, in the absence of financial resources for those objectives;

To the authorities with the right to initiate polygraph testing - active involvement in establishing the functions of polygraphs and assistants of polygraphs within their staff; awareness of the importance of polygraph test results; the half-yearly report to the parliamentary committee on the execution of the respective decision.

*The parliamentary committee did not reconsider the decision, although it had promised to monitor its implementation annually.*

A second anti-corruption law, the execution of which was subject to control, was Law no. 132/2016 on the National Integrity Authority. The control was performed in 2019, under the conditions of the Ex-post Evaluation Methodology regarding the implementation of legislative acts, approved by the Decision of the Permanent Bureau of the Parliament no. 2/2018, by the General Legal Directorate of the Secretariat of the Parliament jointly with NIA.

According to the Evaluation Report, the steps taken to ensure the smooth running of the ANI were found, noting that, even at the time of adoption, gaps / deficiencies and contradictory issues were identified regarding the implementation, which prompted the formulation of a series of proposals to amend and supplement it, as well as other normative acts, proposals sent to the Parliament, the Government and the Ministry of Justice.

It would be important to carry out an ex-post impact assessment of Law no. 132/2016 on the National Integrity Authority, but also on Law no. 133/2016 on the declaration of wealth and personal interests, being imperative to analyze:

- achieving the established objectives of the normative acts;
- the impact of normative acts on society in general, but also on certain groups, sectors, specific fields;
- the consequences of normative acts, economic, financial, social, administrative effects, etc.;
- the reasons that delayed the implementation of the normative acts.

### **Recommendations:**

- Development of legal provisions on parliamentary control, in general and on the exercise of control over the activity of anti-corruption authorities. The institution of parliamentary scrutiny needs to be conceptualized, clarifying the forms and methods. The rules must be balanced - parliamentary scrutiny must not undermine the independence of anti-corruption authorities, a principle that must govern anti-corruption activity;
- Plenary and impartial application of the legal provisions on parliamentary control;
- Ensuring the transparency of the work of Parliament's Permanent Bureau by publishing its decisions;
- Publication by the parliamentary commissions of the annual parliamentary control plans;
- Conflicts of competence between parliamentary committees must be avoided. If the field of anti-corruption also falls within the mandate of the Committee on Legal Affairs, Appointments and Immunities, amendments to Parliament Decision no. 72/2019 on the fields of activity of the standing committees of the Parliament;
- Implement the legal provisions on the subcommittee for the exercise of parliamentary control over the activity of the SIS and inform the public about the subcommittee and its activity;
- Hearing in the plenary of the Parliament the annual activity reports of the anti-corruption authorities;
- In the process of evaluating the anti-corruption activity, it is necessary to set SMART indicators (Specific, Measurable, Accessible, Relevant and Time-bound).
- Even if certain aspects related to the anti-corruption activity were in the focus of the parliamentary committees, they no longer fall on the decided ones. The process of monitoring the level of implementation of decisions taken following hearings needs to be improved;
- In addition to an ex-post impact assessment of the Law on the National Anticorruption Authority and the Law on the Declaration of Assets and Personal Interests, it is also important to monitor the execution of other laws, in particular: the Law on the Code of Conduct for Civil Servants, Law on transparency in the decision-making process, the Law on the verification of incumbents and candidates for public office, the Law on the assessment of institutional integrity, the Law on the approval of the Regulation on the operation of the anti-corruption telephone line, the Integrity Law, the Law on Integrity Warners.
- The National Security, Defense and Public Order Commission must review the enforcement of the Law on the application of testing to the simulated behavior detector (polygraph).

The full text can be viewed at:

[http://www.transparency.md/wp-content/uploads/2022/06/TI\\_Moldova\\_Observator\\_43\\_iunie2022.pdf](http://www.transparency.md/wp-content/uploads/2022/06/TI_Moldova_Observator_43_iunie2022.pdf)

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